

REMARKS

As a preliminary matter, Applicants appreciate the time and courtesy extended by the Examiner during the telephone interview with Applicants' representative on March 26, 2008. During the interview, Applicants' representative discussed proposed claim amendments to clarify that the claimed invention involves determining a load monitoring condition, and then using only that determined load monitoring condition when performing load monitoring (i.e., determining criterion for monitoring, and using only that criterion during a load monitoring process that is performed, in the future, relative to the time of determining the load monitoring condition or conditions).

Applicants' proposed amendments, which are being formally made in this paper, are in response to the Examiner's comments on page 11 (lines 8-21) of the November 27, 2007 Office Action. In those comments, the Examiner asserted that the claims, prior to the most recent amendment, could be interpreted as follows: (a) "to mean that calculations are only carried out for measurements that are determined significant; or (b) "to merely restate the previous limitation wherein the load monitoring condition which is being determined is merely the condition that the system is in under varying load conditions" (i.e. "merely stating that the load monitoring is occurring").

Applicants respectfully submit that amended independent Claim 1 can not be interpreted under the Examiner's interpretation (a) above because Claim 1 now recites that the load monitoring step is only performed on the load monitoring conditions that have been previously determined during the load monitoring condition determining step (which

determining step is described in detail in Amendment F, pages 13-17). Performing load monitoring on numerous criterion and then only further analyzing certain conditions does not satisfy the language of amended Claim 1 because this claim recites that it is the actual load monitoring step, and not merely calculations based on the load monitoring step, that is only performed for certain condition(s) that are determined during a previously performed step. Since independent Claims 5 and 21 have been amended to include language similar to that added to Claim 1, interpretation (a) is not valid for Claims 5 and 21 either.

Additionally, amended independent Claim 1 can not be interpreted under the Examiner's interpretation (b) above because Claim 1 now clearly recites that the load monitoring step is a separate step from the load monitoring condition determination step because the load monitoring step is based on condition(s) "that have been determined during the previously performed load monitoring condition determining step." Thus, since one step (the load monitoring step) is defined as using information from an earlier step (the load monitoring condition determination step), the amended claim language precludes interpretation (b) in which the latter claimed step is merely a restatement of an earlier claimed step. Independent Claims 5 and 21 define similar features to the features at issue. Accordingly, Applicants respectfully submit that interpretation (b) is not valid for independent Claims 1, 5 and 21.

As previously stated in Amendment F, Column 8 (lines 29-31) and Column 12 (lines 42-44) of the Smocha et al. reference do not teach which value(s) should be a criterion for monitoring, as defined in Applicants' independent Claims 1, 5 and 21, because these

sections of the reference, as well as other sections of this reference, do not discuss determining a criterion for monitoring *in the future*. For example, amended independent Claim 1 now recites “performing load monitoring on the computer system on only the load monitoring condition, or conditions, that have been determined during the previously performed load monitoring condition determining step.” Claims 5 and 21 define similar features. Thus, because the load monitoring is performed only on the load monitoring condition(s) that have been determined during the previously performed load monitoring condition determining step, the load monitoring must occur in the future, relative to the load monitoring condition determining step.

More specifically, Column 8 (lines 29-31) of the Smocha et al. reference does not discuss determining a criterion for monitoring *in the future*, but instead relates to eliminating certain values within a set of data that *has already been collected*, where the particular values are either meaningless or incorrect (such as percentage values less than zero or greater than 100). Thus, such load monitoring in Smocha et al. is not performed only on the load monitoring conditions of the previously performed condition determining step. Instead, the load monitoring is performed on numerous criterion, and certain values are eliminated when further analysis is performed.

Similarly, Column 12 (lines 42-44) of the Smocha et al. reference also deals with data that has already been collected (the analysis module . . . determines what segments of the available data may be significant (240) and useful for further correlation analysis (250)"). Further, although lines 44-47 of the Smocha et al. reference discuss that additional

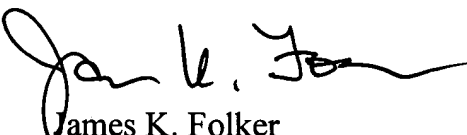
data may be needed, there is no disclosure or suggestion that such data should be collected in the future, or that a new load monitoring step should be performed only with certain conditions (as defined in the claimed load monitoring condition determining step). Instead, the Smocha et al. reference only discloses that the data can be requested from the appropriate repositories. Accordingly, these sections of the Smocha et al. reference do not disclose or suggest the claimed features at issue. The other portions of the Smocha et al. reference referred to by the Examiner for these same features (column 9, lines 14-55 and column 13, lines 3-10) also merely recite performing load monitoring on multiple conditions, and then performing further analysis on only certain conditions, and thus do not disclose or suggest the claimed features at issue. Further, U.S. Patent No. 6,470,464 to Bertram does not remedy this deficiency, nor was it relied upon as such.

Accordingly, as all of the claimed features of the independent claims are not disclosed or suggested in the cited references, Applicants respectfully request the withdrawal of the §103 rejection of Claims 1-6 and 13-37 under 35 U.S.C. §103(a) as being unpatentable over Smocha et al. Bertram.

For all of the above reasons, Applicants request reconsideration and allowance of the claimed invention. Should the Examiner be of the opinion that a telephone conference would aid in the prosecution of the application, or that outstanding issues exist, the Examiner is invited to contact the undersigned attorney.

Respectfully submitted,

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